

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department of Telecommunications and Energy on its own Motion as to the propriety of the rates and charges set forth in the following tariff:
M.D.T.E. No. 17, filed with the Department on April 10, 2002, to become effective May 10, 2002, by Verizon New England, Inc. d/b/a Verizon Massachusetts

D.T.E. 02-26

**AT&T'S COMMENTS ON VERIZON'S TARIFF PROPOSALS TO IMPOSE
UNLAWFUL RESTRICTIONS ON PHYSICAL COLLOCATION AND TO MAKE
INTERIM REDUCTIONS IN UNBUNDLED SWITCHING RATES,
SUBJECT TO RETROACTIVE TRUE-UP**

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I. INTRODUCTION AND SUMMARY.

On April 10, 2002, Verizon proposed changes to its Tariff No. 17 that would do three things.

First, Verizon proposes a significant and unlawful restriction on CLEC use of physical collocation space. The proposed revision to Verizon's Tariff DTE MA No. 17, Part E, Section 2.2.2.J.1, would bar CLECs from placing in physical collocation spaces any equipment that is used, in whole or in part, to provide xDSL or other enhanced services. AT&T respectfully urges the Department to reject this proposed revision as it would violate the current physical collocation rules established just last year by the Federal Communications Commission ("FCC").

Second, Verizon has proposed an interim reduction in certain switching-related UNE rates, subject to retroactive true-up based on the Department's final decision in Docket 01-20. As Verizon acknowledges, these issues are pending and will be resolved in Docket D.T.E. 01-20, where they have been fully litigated and briefed. The new interim rates in the proposed tariff remain far too high, as shown by the record evidence in that proceeding. However, Verizon is right to concede that it cannot justify keeping the currently tariffed rates in place any longer, given that even the exorbitant switching rates proposed by Verizon in Docket 01-20 are materially lower than current rates. It is appropriate for all switching rates – including the dedicated trunk port rates that Verizon has ignored in its tariff filing – be reduced on an interim basis effective April 10, 2002, subject to retroactive true-up after final rates are set in Docket 01-20. In addition, Verizon should be directed to propose language to eliminate the nonconversation time additive ("NCTA") from the tariff. Since Verizon has conceded in Docket 01-20 that the new rates will account for nonconversation time, it would be double counting to maintain the NCTA provisions in the tariff.

Third, Verizon has also proposed certain changes in the application of UNE switching rates that are inconsistent with Department precedent and concern issues pending in Docket 01-20. AT&T asks that the Department reject these rate application changes at this time, especially since the record evidence in Docket 01-20 provides no basis for deviating from prior Department orders regarding the application of switch usage rates to so-called intraswitch calls.

There is no need for further investigation of any of these issues in this docket. The switch rate issues, regarding both the rate levels and the rate application, are fully joined in Docket 01-20. It would be redundant and wasteful to begin a second investigation of the same issues here. The new collocation restrictions sought by Verizon are patently unlawful, and can and should be rejected outright.

II. COMMENTS.

A. Verizon Should Not be Permitted to Bar CLECs from Physically Collocating Equipment Used for xDSL or Other Enhanced Services.

Verizon's Tariff DTE MA No. 17, Part E., Section 2.2.2.J.1, currently provides as follows:

The CLEC shall not place in its multiplexing node [*i.e.* physical collocation space] equipment that is designed exclusively for switching or enhanced services and that is not necessary for interconnection.

The proposed tariff revisions would materially change this provision to read instead as follows:

The CLEC shall not place in its multiplexing node equipment that is used for enhanced services.

By deleting the concepts of “designed exclusively for” and “not necessary for interconnection,” this change appears designed to bar CLECs from placing any equipment used for xDSL or other enhanced services – evidently including but not limited to splitters, routers, digital subscriber line access multiplexers (“DSLAMs”), and asynchronous transfer mode (ATM) multiplexers – into a physical collocation space.

The Department would be right to wonder whether Verizon's proposed interim reductions in switching rates is intended to serve as a Trojan horse with which Verizon could smuggle these substantial and, as explained below, unlawful restrictions into its Tariff No. 17. In its April 10 and 11 letters to the Department regarding the tariff filing, Verizon refers only to the proposed interim switching rates and never mentions this troubling attempt to limit the use of physical collocation. Within the proposed tariff pages themselves Verizon labels this change with the tariff code "(T)", which means "[t]ext that has changed without causing a change in regulation."¹ But this is inaccurate. The proposed textual change would materially and improperly change the substance of the provision. Furthermore, this anticompetitive attempt to limit the ability of CLECs to use physical collocation is not inadvertent. To the contrary, on Verizon's Website it refers to this tariff proposal as the "Mass. UNE Collocation Admin Filing," with no reference whatsoever to the proposed interim reduction in switching rates.² Thus, someone at Verizon views the main point of this tariff filing to be the restriction on CLEC use of physical collocation.

The proposed restriction on physical collocation of equipment used for enhanced services would run afoul of governing FCC rules. The FCC's August 2001 collocation remand order makes clear that CLECs are entitled to collocate equipment used to provide enhanced services, because a CLEC must be able to do so to interconnect with Verizon's network and to obtain nondiscriminatory access to unbundled network elements.³ "[I]ncumbent LECs cannot exercise

¹ See Verizon's Tariff DTE MA No. 17, Part A, Section 1.1.4.A.7.

² See < http://www.bellatlantic.com/tariffs_info/intra/pendtar/ma/index.htm >.

³ *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket 98-147, Fourth Report and Order, No. FCC 01-204 (rel. Aug. 8, 2001) ("FCC's Collocation Remand Order"), ¶¶ 27-31, 44 *et seq.*

de facto veto power over their collocated competitors' choice of equipment and network architecture.”⁴

The FCC determined that CLECs may collocate any equipment needed for interconnection or access to unbundled network elements.⁵ Equipment is necessary for interconnection, and entitled to be collocated, if needed to obtain interconnection “at a level equal in quality to that which the incumbent obtains within its own network or the incumbent provides to any affiliate, subsidiary, or other party.”⁶ Similarly, equipment is necessary for access to a UNE, and thus also eligible for collocation, if “as a practical, economic, or operational matter” it is needed to obtain access to any of the “features, functions, or capabilities” of any UNE.⁷

Significantly, Verizon conceded in the FCC’s collocation proceeding that “multiplexers, concentrators, and DSLAMs used in connection with DSL services” are necessary for interconnection or access to UNEs, and thus that CLECs are entitled physically to collocate such equipment within Verizon’s facilities.⁸ Indeed, the FCC found that there was “little, if any, controversy” regarding the right of CLECs to collocate equipment used for enhanced services.⁹ Since Verizon or its data affiliate use DSLAMs and other specialized equipment in order to provide xDSL services over loops, CLECs have the legal right to collocate splitters, DSLAMs, routers, and other equipment needed to access all of the features, functions, and capabilities of unbundled loops.¹⁰

⁴ *Id.*, ¶ 54.

⁵ 47 C.F.R. § 51.323(b).

⁶ 47 C.F.R. § 51.323(b)(1). *See also FCC’s Collocation Remand Order* ¶ 30.

⁷ 47 C.F.R. § 51.323(b)(2). *See also FCC’s Collocation Remand Order* ¶ 31.

⁸ *FCC’s Collocation Remand Order*, ¶ 44 fn. 118.

⁹ *Id.* ¶ 44.

¹⁰ *Id.* ¶ 46.

Verizon cannot bar CLECs from collocating any equipment unless Verizon first “prove[s] to the state commission that the equipment is not necessary for interconnection or access to unbundled network elements.”¹¹ Verizon has not met this burden of proof, and has made no effort to do so. Indeed, since Verizon admitted and the FCC has found that CLECs are entitled to collocate equipment used for enhanced services, Verizon could not ever meet this burden.

AT&T respectfully urges the Department to reject this proposed change in the tariff language regarding the ability of CLECs to collocate equipment.

B. Because the Switching Rates in the Proposed Tariff Remain Much Too High, They Should Only Be Permitted on a Brief Interim Basis, with Final Switch Rates made Retroactive to April 10, 2002.

1. TELRIC-Compliant Unbundled Switching Rates Must be Set in Docket 01-20, as Verizon’s Proposed Interim Rates Remain Exorbitant.

Verizon says that effective April 10, 2002, the Department should “place in effect the local switching and transport rates which [Verizon] proposed in D.T.E. 01-20,” subject to retroactive true up “based on a final Department order in that docket.”¹² Verizon is right to acknowledge that such a retroactive true up will be needed. As AT&T has explained in its briefs in Docket 01-20, the record evidence in that proceeding demonstrates that the final switching rates should be much less than Verizon has proposed. AT&T summarized this record evidence in the following table, which appeared at page 14 of our reply brief in 01-20. The rates in the last two columns reflect the prices that Verizon actually pays for new switches, as Verizon itself reported in response to Record Request 49.

¹¹ 47 C.F.R. § 51.323(c).

¹² See April 10, 2002, cover letter from Donna Cupelo regarding Verizon’s proposed tariff changes, at 2.

**Summary of Key Switching Rate Elements – Adjusted for New Information from Verizon
with Results of Melding New Switch and Growth Part Pricing**

<u>Rate Element</u>	<u>VZ-MA 100% Growth</u>	<u>Pitts’ Rev’d 100% Growth</u>	<u>90% New / 10% Growth</u>	<u>100% New</u>
Analog Line Port per month	\$2.55	\$1.93	\$0.56	\$0.41
Switching – Originating per MOU	.0028880	.0003133	.0000905	.0000658
Switching – Terminating per MOU	.0025330	.0002749	.0000794	.0000577
Trunk Port – Common per MOU	.0005690	.0003931	.0001136	.0000826
Tandem Switching per MOU	.0002720	.0000840	.0000243	.0000176
Tandem Trunk Port per MOU	.0005940	.0001793	.0000518	.0000377

The FCC had asked Verizon to report “[w]hat vendor price switch discount did Verizon obtain” for new switches that it purchased through a competitive bid.¹³ AT&T took the switch discount as calculated and reported it by Verizon, ran it through Verizon’s own SCIS model to calculate the resulting material investment per POTS line for new switches (which came out to \$17.35), and applied the result to Verizon’s own switch cost model to derive the new switch prices summarized in the last column of the preceding table.¹⁴

Verizon has not challenged any of these calculations. However, Verizon did attack AT&T on the grounds that Verizon’s material investment per POTS line for new switches is purportedly twice the \$17.35 that results from applying the new switch discount identified by Verizon-VA.¹⁵ It is hard to know what to make of this assertion. It is not supported by the record evidence, and it flatly contradicts Verizon’s own calculation in its record request response of the discount that it actually receives for new switches.

But even if for the sake of argument one accepted the unsupported figures tossed out by Verizon in its 01-20 reply brief, the resulting switch rates are still in the neighborhood of the

¹³ See Docket D.T.E. 01-20, Verizon-VA’s Response to the FCC’s RR VZ-VA-32, in the proprietary attachment to RR-DTE-49S.

¹⁴ See Docket D.T.E. 01-20, AT&T’s Initial Brief at 62-65.

¹⁵ See Docket D.T.E. 01-20, Verizon’s Reply Brief at 66-67.

amounts calculated by AT&T, and are still many times lower than the switching rates proposed by Verizon. Accepting the new switch material price claimed by Verizon in its reply brief would change the final two numbers in this summary table as follows:

**Summary of Key Switching Rate Elements – Adjusted per Verizon’s Reply Brief
with Results of Melding New Switch and Growth Part Pricing**

<u>Rate Element</u>	VZ-MA 100% Growth	Pitts’ Rev’d 100% Growth	90% New / 10% Growth	100% New
Analog Line Port per month	\$2.55	\$1.93	\$0.95	\$0.84
Switching – Originating per MOU	.0028880	.0003133	0.0001542	0.0001365
Switching – Terminating per MOU	.0025330	.0002749	0.0001353	0.0001198
Trunk Port – Common per MOU	.0005690	.0003931	0.0001935	0.0001713
Tandem Switching per MOU	.0002720	.0000840	0.0000413	0.0000366
Tandem Trunk Port per MOU	.0005940	.0001793	0.0000882	0.0000781

Thus, even if one indulges Verizon’s unsupported assertions about its actual new switch material costs, those assertions combined with the record evidence in Docket 01-20 shows that the last two columns of numbers in the preceding table represent the range within which TELRIC-compliant switching rates for Massachusetts should fall.

AT&T recognizes that the Department will not be deciding these switch rate issues here, but instead will resolve them in Docket 01-20. The point of addressing them in summary fashion in these comments is to underscore the vital importance of the forthcoming decision in Docket 01-20, and the need for a retroactive true-up of the interim tariff rate reductions now proposed by Verizon to the substantially lower rate levels that should result from an objective analysis of the record evidence in Docket 01-20.

Finally, if in Docket D.T.E. 01-20 the Department ultimately eliminates time-of-day variations in and geographic deaveraging of switching rates, then the last sentence in the proposed revision to Verizon Tariff DTE MA No. 17, Part B, Section 6.3.2.A. should be deleted. That sentence reads, “Usage is affected by the following factors.” This is a reference to the time-

of-day and geographic deaveraging factors that are currently contained in the remained of that section. If those factors are eliminated, the antecedent reference to them should also be eliminated.

2. The Proposed Tariff Fails to Reduce Dedicated Trunk Port Rates.

As noted above, Verizon says that effective April 10, 2002, the Department should “place in effect the local switching and transport rates which [Verizon] proposed in D.T.E. 01-20,” subject to retroactive true up “based on a final Department order in that docket.”¹⁶

But Verizon’s proposed tariff fails to carry out this promise, because it neglects to propose any change to the existing dedicated trunk port rates. Consistent with Verizon’s proposal, the Department should direct Verizon to reduce the trunk port rates in Verizon Tariff DTE MA No. 17, Part M, Section 2.4.1 (re dedicated tandem and TOPS trunk ports) and Section 2.6.2 (re dedicated DS1 trunk port) to the levels proposed by Verizon in Docket D.T.E. 01-20. These reductions should also be made effective April 10, 2002, on an interim basis, subject to retroactive true up after the Department renders its final decision in Docket 01-20.

3. Verizon Fails to Eliminate the Double Counting of Non-Conversation Time.

Currently, Verizon applies unbundled switch usage rates by taking the actual minutes of use, inflating them by a “nonconversation time additive,” and multiplying the resulting larger number of minutes by the rate.¹⁷ AT&T demonstrated in Docket 01-20 that if not eliminated from the tariff this language will lead to double counting, because Verizon’s new switch cost studies already account for nonconversation time in the calculation of the switch usage rate.¹⁸ Verizon did not muster any substantive response to this point, but instead conceded that it must

¹⁶ See April 10, 2002, cover letter from Donna Cupelo regarding Verizon’s proposed tariff changes, at 2.

¹⁷ See, e.g., Verizon’s Tariff DTE MA No. 17 Part B, Sections 6.3.1.A, 6.3.2.B, 6.3.2.C, 6.3.2.D, 6.3.2.E.1.

¹⁸ See Docket D.T.E. 01-20, AT&T’s Initial Brief at 93-94.

revise Tariff No. 17 in order to avoid double counting nonconversation time.¹⁹ AT&T requests that the Department direct Verizon to propose language that will eliminate this double counting of nonconversation time.

C. Verizon Proposes to Apply Switch Usage Rates In a Manner Inconsistent with Department Precedent, With Respect to Intraswitch Calls.

In addition to Verizon's proposal for an interim reduction in tariffed unbundled switching rates, Verizon also proposes several changes apparently intended to apply two switching usage charges to intra-switch calls that are processed only once by a single Verizon switch. These proposed changes are to Verizon Tariff DTE MA No. 17, Part B, Sections 6.3.B, 6.3.E, and 6.3.E.4.a.

This set of changes is inappropriate, and should be rejected. It is flatly inconsistent with existing Department precedent, as the Department has previously ruled that Verizon may only assess one switching usage charge for intraswitch calls.²⁰ Verizon's effort to reverse this precedent is an issue pending in Docket 01-20.²¹ Verizon should not be permitted unilaterally to change its tariff in a manner that the Department has previously ruled would be improper.

III. CONCLUSION.

For the reasons stated above, AT&T respectfully urges the Department to do the following:

(i) deny Verizon's unlawful attempt to exclude from physical collocation cages any equipment used to any extent to provide enhanced services, by rejecting the proposed change to Verizon Tariff DTE MA No. 17, Part E, Section 2.2.2.J.1;

¹⁹ See Docket D.T.E. 01-20, Verizon's Reply Brief, at 86, fn. 87.

²⁰ Investigation by the Department on its own motion as to the propriety of the rates and charges set forth in the following tariffs: M.D.T.E. Nos. 14 and 17, filed with the Department on August 27, 1999, to become effective on September 27, 1999, by New England Telephone Telegraph Company d/b/a Bell Atlantic -Massachusetts, D.T.E. 98-57, Order (March 24, 2000), at 219 (citing Part B, Section 6.3.2.B of Tariff No. 17).

²¹ See Docket D.T.E. 01-20, AT&T's Reply Brief at 75-76; WorldCom's Initial Brief at 39-40.

(ii) permit the proposed interim switching rate reductions to go into effect on April 10, 2002, subject to the condition (which was proposed by Verizon) that “they become effective subject to ‘true up’ based on a final Department order” in Docket D.T.E. 01-20;

(iii) direct Verizon to reduce its dedicated trunk port rates in the same interim manner first to the levels proposed by Verizon in D.T.E. 01-20, subject to further revision and true up based on the Department’s final order in that docket;

(iv) direct Verizon to propose revisions to Verizon Tariff DTE MA No. 17, Part B, Section 6.3, to eliminate the nonconversation time additive (NCTA) to avoid double counting, since nonconversation time will be taken into account in the switching rates to be adopted in Docket D.T.E. 01-20; and

(v) reject Verizon’s proposed changes to Verizon Tariff DTE MA No. 17, Part B, §§ 6.3.2.B, 6.3.2.E (introductory paragraph), and 6.3.2.E.4.a, as the issues raised by those changes are still pending in Docket D.T.E. 01-20, and Verizon’s proposed tariff change regarding charges for intraswitch calls is inconsistent with current Department orders.

Respectfully submitted,

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